relief; for after the defendant has acquired title he cannot enforce a forfeiture without having tendered a deed. *Tacoma Water Supply Co.* v. *Dumermuth*, 99 Pac. 741 (Wash.).

A vendor may either enforce or waive a forfeiture clause; but if he wishes to enforce it he must give notice of that intention. *Chrisman* v. *Miller*, 21 Ill. 227, 236; *Harris* v. *Troup*, 8 Paige (N. Y.) 422. If forfeiture is not declared until performance of the vendor's promise is due, the promises become mutual and concurrent. *Beecher* v. *Conradt*, 3 Kern. (N. Y.) 108. Thereafter the vendor cannot declare a forfeiture without first tendering a deed. *Stein* v. *Waddell*, 37 Wash. 634. Hence in the principal case the defendant never made a valid declaration of forfeiture. Even if he had, it is not certain that he could avoid specific performance. For the forfeiture clause alone does not make time of the essence. *Barnard* v. *Lee*, 97 Mass. 92. And even though the parties stipulate that time shall be of the essence, equity may refuse to allow a forfeiture. *National Land Co.* v. *Perry*, 23 Kan. 140; *Richmond* v. *Robinson*, 12 Mich. 193. In England and in some American jurisdictions, if the delay does not put the parties in such a position that damages will not be an adequate compensation, equity will give specific performance, despite the forfeiture clause. *In re Dagenham Co.*, 8 Ch. App. 1022; *Edgerton* v. *Peckham*, 11 Paige (N. Y.) 352.

VENDOR AND PURCHASER — SPECIFIC PERFORMANCE — MARKETABLE TITLE. — The plaintiff sued to recover an installment paid under a contract for the purchase of land, on the ground that the defendant could not furnish a marketable title. The defendant denied that his title was unmarketable, and asked specific performance. The determination of the validity of the title would involve a decision upon a doubtful point of law. *Held*, that the plaintiff will not be compelled to take a conveyance from the defendant. *Dixon* v. *Cozine*, 114 N. Y. Supp. 615. See NOTES, p. 529.

WATERS AND WATERCOURSES — NATURAL WATERCOURSES — POLLUTION BY MINING OPERATIONS. — The plaintiff, a lower riparian owner, was damaged by the pollution of the stream by salt water caused to flow into it by the defendant, in mining petroleum. The defendant's operations were conducted with due care in the only known method, and the discharge of salt water into the stream was inevitable. *Held*, that the plaintiff may recover damages. *Straight* v. *Hover*, 54 Oh. L. Bull. Supp. 78 (Oh. Sup. Ct., Jan. 26, 1909).

The rule that an upper riparian owner is liable to a lower owner for any injury from pollution of the stream caused by an unreasonable user has been generally recognized. *Ferguson* v. *Firmenich Manufacturing Co.*, 77 Ia. 576. The reasonableness of the user is a question for the jury upon all the circumstances of the case. *Hayes* v. *Waldron*, 44 N. H. 580. Thus where the owner of cattle pastured them near a stream, and they so befouled the water that it was unfit for use by a water company, it was held that the owner was not liable. *Helfrich* v. *Catonsville Water Co.*, 74 Md. 269. But a user for manufacturing purposes is generally considered unreasonable. See *Strobel* v. *Kerr Salt Co.*, 164 N. Y. 303. And it is no defense that the pollution was unavoidable. *Pennington* v. *Brinsop Hall Coal Co.*, L. R. 5 Ch. D. 769. But the rule has been laid down that where a work is lawful and cannot be carried on elsewhere, there is no liability in the absence of negligence. *Barnard* v. *Sherley*, 135 Ind. 547. And it has been held that the protection of important industries renders the general rule of liability inapplicable. *Pa. Coal Co.* v. *Sanderson*, 113 Pa. St. 126. But the weight of authority supports the principal case. *Bowling Coal Co.* v. *Ruffner*, 100 S. W. 116 (Tenn.). And in most jurisdictions the plaintiff might also have obtained an injunction. *Beach* v. *Sterling Iron & Zinc Co.*, 54 N. J. Eq. 65. See 14 HARV. L. REV. 458; 18 *ibid.* 149. *Contra*, *Salem Iron Co.* v. *Hyland*, 74 Oh. St. 160.